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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CIVIL SECOND APPEAL NO.222/99

Iqbal Khan & Anr.

Versus

Fakir Mohammad @ Fakiriya & Anr.

DATE OF ORDER :: 13/07/2007**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. D.D. Patodia, for appellant

Mr. Ajay Gupta, for respondents

Instant appeal has been filed by plaintiff-appellant assailing the judgments of learned trial Judge and so also of learned Appellate Court whereby the suit filed for permanent injunction and demolition of construction against defendants-respondents has been dismissed.

Appellant came with a specific case in his plaint that he purchased Plot Nos.R.40 & R.41 situated in Rana Colony, Jaipur and in front of his house, the defendant on construction of room has encroached the public road which is 30 ft. wide as available in the site plan issued to him by the then the Municipal Corporation or even by JDA at a later stage and in support of it, Ex.12 site plan & Ex.13 were placed on record to substantiate their statement of fact since this was disputed by defendant-respondents in their

written statement. A specific issue No.1 was framed, which is as under:

"क्या वादी प्रतिवादीगण के विरुद्ध स्थायी निषेधाज्ञा इस आशय की प्राप्त करने का अधिकारी है कि वाद पत्र के पद न.- 2 में अंकित तथा संलग्न नक्शे में लाल धारियों से दर्शाई गई भूमि ए-बी-सी-डी पर किसी प्रकार का निर्माण नहीं करे तथा जो निर्माण ए-बी-सी-डी मार्क पर किया गया है उसे हटाया जावे?"

Learned trial Judge after taking into consideration the material decided the same against plaintiff-appellant and the said finding was affirmed on appreciation of documents which appellant additionally placed on record at appellate stage by filing application U/O 41 R.27 CPC as well.

I have considered the submission of both the counsel and perused the finding recorded under order impugned & so also record of the case.

Counsel for appellant has tried to convince this court that the documents referred to by courts below have not been properly appreciated and infact have misread in recording finding and that requires consideration by this court.

After going through the record, this court finds that both the courts below have appreciated documents on record including Ex.12 & 13 on which

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counsel has stressed upon and concurrent finding of fact has been recorded by both the courts below which does not call for any further interference. No substantial question of law arises in the instant appeal for consideration.

Consequently, the appeal fails and is hereby dismissed.

[AJAY RASTOGI], J.

FRBOHRA, JR.P.A.